

AMENDED IN SENATE JANUARY 27, 2014

**SENATE BILL**

**No. 210**

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**Introduced by Senator Hancock**

February 11, 2013

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An act to amend Sections ~~1270, 1275, 1275~~ and 1318.1 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 210, as amended, Hancock. Criminal procedure: ~~release on defendant's own recognizance.~~ *pretrial release.*

(1) ~~Existing law provides that a defendant who is in custody and arraigned for a misdemeanor offense, or who has been arrested upon an out-of-county warrant arising from a case involving only misdemeanors, is entitled to be released on his or her own recognizance unless the court finds that the release will compromise public safety or will not reasonably ensure the appearance of the defendant, in which case the court is required to set bail and specify conditions, if any, for release.~~

~~This bill would authorize a court to determine, at the time of arraignment in any case that is before a court concerning the commission of a felony punishable by imprisonment in a county jail, whether a defendant who is still in custody may be released on his or her own recognizance. In making this decision, the bill would require the court to determine whether the release will compromise public safety. The bill would authorize the court to consider, in its discretion, imposing on the defendant any reasonable conditions it deems appropriate, and would authorize the court to require supervision by any designated local agency, to ensure public safety and to ensure the defendant's appearance. The bill would require the court to set bail if release will compromise~~

~~public safety or will not reasonably ensure the appearance of the defendant.~~

~~(2)~~

~~(1) Existing law requires a judge or magistrate, in setting, reducing, or denying bail, to take into consideration the protection of the public, the seriousness of the offense, the defendant's previous criminal record, and the probability of the defendant appearing at trial or a hearing.~~

~~This bill would revise the factors that the judge or magistrate would be required to consider to, among other things, require the judge or magistrate to consider the history and characteristics of the defendant, and to consider the nature and circumstances of the offense. The bill would require a judge or magistrate to also consider those factors when determining conditions for pretrial release.~~

~~(3)~~

~~(2) Existing law authorizes a court, with the concurrence of the county board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. In cases involving certain crimes, including violent felonies, an investigative report is required to be prepared that includes specified information, including outstanding warrants against the defendant and prior incidents where the defendant has failed to make a court appearance.~~

~~This bill would also authorize a sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ an investigative staff for those purposes, and would require a pretrial investigative report to be prepared before a court may order a defendant released on his or her own recognizance in any case involving specified crimes, including a violent felony. The bill would authorize the preparation of a pretrial investigation report in all other cases in which a court, sheriff, county probation department, or other local governmental agency has employed an investigative staff to recommend whether the defendant should be released on his or her own recognizance. The bill would require any pretrial investigative report to include the results of an evidence-based pretrial risk assessment, as defined, evaluating the defendant's probability of appearing at trial and potential risk to public safety. The bill would prohibit, for purposes of preparing the report, a defendant from being interviewed about the facts and circumstances of the defendant's current offense. The bill would authorize a court, sheriff, county probation department, or other local governmental agency, with the concurrence~~

of the board of supervisors, to employ supervision staff to monitor a defendant’s compliance with release conditions ordered by the court, as specified.

(4)

(3) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make legislative findings and declarations relating to, among other things, the necessity of treating pretrial investigation reports as confidential in order for pretrial programs to function properly.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Pretrial custody reform is urgently needed in California,  
4 where the pretrial population far exceeds the national average of  
5 61 percent. More than 71 percent of the 71,000 Californians held  
6 in county jails statewide on any given day are awaiting trial.

7 (b) Pretrial custody reform will support the implementation of  
8 public safety realignment by providing counties greater flexibility  
9 in managing their pretrial populations using best practices  
10 developed over many years across many jurisdictions.

11 (c) Pretrial services programs have been successfully  
12 implemented in many jurisdictions, and have helped to reduce the  
13 pretrial jail populations, save money, reduce recidivism, and protect  
14 the public.

15 (d) Increasing the use of evidence-based practices in pretrial  
16 population management programs will allow better empirical  
17 analysis in pretrial decisions, and will help to ensure that the court’s  
18 decision to order release, conditions of release, and bail is based  
19 on a credible assessment of the defendant’s risk to public safety  
20 and the likelihood of appearance as required.

21 (e) In order for pretrial programs to function properly and to  
22 protect the rights of persons submitting sensitive information, it  
23 is essential to treat pretrial investigation reports as confidential so

1 the reports are used only for release, bail, and monitoring  
2 considerations.

3 ~~SEC. 2. Section 1270 of the Penal Code is amended to read:~~

4 ~~1270. (a) Any person who has been arrested for, or charged~~  
5 ~~with, an offense other than a capital offense may be released on~~  
6 ~~his or her own recognizance by a court or magistrate who could~~  
7 ~~release a defendant from custody upon the defendant giving bail,~~  
8 ~~including a defendant arrested upon an out-of-county warrant. A~~  
9 ~~defendant who is in custody and is arraigned on a complaint~~  
10 ~~alleging an offense which is a misdemeanor, and a defendant who~~  
11 ~~appears before a court or magistrate upon an out-of-county warrant~~  
12 ~~arising out of a case involving only misdemeanors, is entitled to~~  
13 ~~an own recognizance release unless the court makes a finding on~~  
14 ~~the record, in accordance with Section 1275, that an own~~  
15 ~~recognizance release will compromise public safety or will not~~  
16 ~~reasonably assure the appearance of the defendant as required.~~  
17 ~~Public safety shall be the primary consideration. If the court makes~~  
18 ~~one of those findings, the court shall set bail and specify the~~  
19 ~~conditions, if any, whereunder the defendant shall be released.~~

20 ~~(b) The court shall determine, at the time of arraignment,~~  
21 ~~whether a defendant who is still in custody, and is charged with a~~  
22 ~~felony, the sentence for which may be served in a county jail~~  
23 ~~pursuant to subdivision (h) of Section 1170, is eligible for release~~  
24 ~~on his or her own recognizance and to be ordered to appear, as~~  
25 ~~required. Public safety shall be the primary consideration in this~~  
26 ~~determination. In granting an own recognizance release, a court~~  
27 ~~may consider, in its discretion, imposing on the defendant any~~  
28 ~~reasonable conditions it deems appropriate, and may require~~  
29 ~~supervision by any designated local agency, to ensure public safety~~  
30 ~~and to ensure the defendant's appearance.~~

31 ~~(c) If the judge or magistrate finds that release pursuant to~~  
32 ~~subdivision (b) will compromise public safety or will not~~  
33 ~~reasonably ensure the appearance of the defendant, as required,~~  
34 ~~the court shall then set bail as is reasonably necessary to ensure~~  
35 ~~the appearance of the defendant. A judge or magistrate may set~~  
36 ~~bail in an amount less than what is specified in the county bail~~  
37 ~~schedule, where he or she determines that the amount specified in~~  
38 ~~the county bail schedule is higher than necessary to reasonably~~  
39 ~~ensure the appearance of the defendant. In making this~~  
40 ~~determination, the court may consider information included in a~~

1 pretrial services report, prepared in accordance with Section 1318.1,  
2 if one is available.

3 ~~(d) Article 9 (commencing with Section 1318) shall apply to~~  
4 ~~any person who is released pursuant to this section.~~

5 SEC. 3. Section 1275 of the Penal Code is amended to read:

6 ~~1275. (a) In determining conditions for pretrial release, and~~  
7 ~~in setting, reducing, or denying bail, the judge or magistrate shall,~~  
8 ~~on the available information, take into consideration the protection~~  
9 ~~of the public, the nature and circumstances of the offense charged,~~  
10 ~~the history and characteristics of the defendant, the previous~~  
11 ~~criminal record of the defendant, including whether the defendant~~  
12 ~~was, at the time of arrest for the charged offense, on probation,~~  
13 ~~parole, or other form of release pending trial, sentencing, or appeal,~~  
14 ~~and the probability of his or her appearing at trial or hearing of the~~  
15 ~~case, including the defendant's record of appearance at past court~~  
16 ~~hearings or of flight to avoid arrest or prosecution. Public safety~~  
17 ~~shall be the primary consideration.~~

18 ~~(b) In considering the history and characteristics of the~~  
19 ~~defendant, the judge or magistrate may consider any of the~~  
20 ~~following:~~

21 ~~(1) The ties of the defendant to the community, including his~~  
22 ~~or her employment, the duration of his or her residence, and the~~  
23 ~~defendant's family attachments.~~

24 ~~(2) The defendant's current educational or vocational program~~  
25 ~~enrollment and participation.~~

26 ~~(3) The physical and mental condition of the defendant and the~~  
27 ~~defendant's history related to dependence on alcohol or controlled~~  
28 ~~substances, including past and current participation in substance~~  
29 ~~abuse programs and counseling.~~

30 ~~(c) In considering the nature and circumstances of the offense~~  
31 ~~charged, the judge or magistrate shall include consideration of the~~  
32 ~~alleged injury to the victim, and alleged threats to the victim or a~~  
33 ~~witness to the crime charged, the alleged use of a firearm or other~~  
34 ~~deadly weapon in the commission of the crime charged, and the~~  
35 ~~alleged use or possession of controlled substances by the defendant.~~

36 ~~(d) In considering offenses wherein a violation of Chapter 6~~  
37 ~~(commencing with Section 11350) of Division 10 of the Health~~  
38 ~~and Safety Code is alleged, the judge or magistrate shall consider~~  
39 ~~the following: (1) the alleged amounts of controlled substances~~  
40 ~~involved in the commission of the offense, and (2) whether the~~

1 defendant is currently released on bail for an alleged violation of  
2 Chapter 6 (commencing with Section 11350) of Division 10 of the  
3 Health and Safety Code.

4 (e) ~~Before a court reduces bail below the amount established~~  
5 ~~by the bail schedule approved for the county, in accordance with~~  
6 ~~subdivisions (b) and (e) of Section 1269b, for a person charged~~  
7 ~~with a serious felony, as defined in subdivision (c) of Section~~  
8 ~~1192.7, or a violent felony, as defined in subdivision (c) of Section~~  
9 ~~667.5, the court shall make a finding of unusual circumstances and~~  
10 ~~shall set forth those facts on the record. For purposes of this~~  
11 ~~subdivision, “unusual circumstances” does not include the fact~~  
12 ~~that the defendant has made all prior court appearances or has not~~  
13 ~~committed any new offenses.~~

14 *SEC. 2. Section 1275 of the Penal Code is amended to read:*

15 1275. (a) (1) *In determining conditions for pretrial release,*  
16 *and in setting, reducing, or denying bail, a judge or magistrate*  
17 *shall, on the available information, take into consideration the*  
18 *protection of the public, the seriousness nature and circumstances*  
19 *of the offense charged, the history and characteristics of the*  
20 *defendant, the previous criminal record of the defendant, including*  
21 *whether the defendant was, at the time of arrest for the charged*  
22 *offense, on probation, parole, or other form of release pending*  
23 *trial, sentencing, or appeal, and the probability of his or her*  
24 *appearing at trial or hearing of the case, including the defendant’s*  
25 *record of appearance at past court hearings or of flight to avoid*  
26 *arrest or prosecution. The public Public safety and the safety of*  
27 *the victim shall be the primary consideration. In setting bail, a*  
28 *judge or magistrate may consider factors such as the information*  
29 *included in a report prepared in accordance with Section 1318.1.*

30 (2) *In considering the seriousness nature and circumstances of*  
31 *the offense charged, a judge or magistrate shall include*  
32 *consideration of the alleged injury to the victim, and alleged threats*  
33 *to the victim or a witness to the crime charged, the alleged use of*  
34 *a firearm or other deadly weapon in the commission of the crime*  
35 *charged, and the alleged use or possession of controlled substances*  
36 *by the defendant.*

37 (3) *In considering the history and characteristics of the*  
38 *defendant, the judge or magistrate may consider any of the*  
39 *following:*

1 (A) *The ties of the defendant to the community, including his or*  
2 *her employment, the duration of his or her residence, and the*  
3 *defendant’s family attachments.*

4 (B) *The defendant’s current educational or vocational program*  
5 *enrollment and participation.*

6 (C) *The physical and mental condition of the defendant and the*  
7 *defendant’s history related to dependence on alcohol or controlled*  
8 *substances, including past and current participation in substance*  
9 *abuse programs and counseling.*

10 (b) In considering offenses wherein a violation of Chapter 6  
11 (commencing with Section 11350) of Division 10 of the Health  
12 and Safety Code is alleged, a judge or magistrate shall consider  
13 the following: (1) the alleged amounts of controlled substances  
14 involved in the commission of the offense, and (2) whether the  
15 defendant is currently released on bail for an alleged violation of  
16 Chapter 6 (commencing with Section 11350) of Division 10 of the  
17 Health and Safety Code.

18 (c) Before a court reduces bail to below the amount established  
19 by the bail schedule approved for the county, in accordance with  
20 subdivisions (b) and (c) of Section 1269b, for a person charged  
21 with a serious felony, as defined in subdivision (c) of Section  
22 1192.7, or a violent felony, as defined in subdivision (c) of Section  
23 667.5, the court shall make a finding of unusual circumstances and  
24 shall set forth those facts on the record. For purposes of this  
25 subdivision, “unusual circumstances” does not include the fact  
26 that the defendant has made all prior court appearances or has not  
27 committed any new offenses.

28 ~~SEC. 4.~~

29 *SEC. 3.* Section 1318.1 of the Penal Code is amended to read:

30 1318.1. (a) A court, sheriff, county probation department, or  
31 other local governmental agency, with the concurrence of the board  
32 of supervisors, may employ an investigative staff for the purpose  
33 of recommending whether a defendant should be released on his  
34 or her own recognizance.

35 (b) Whenever a court, sheriff, county probation department, or  
36 other local governmental agency has employed an investigative  
37 staff pursuant to subdivision (a), before a court may order a  
38 defendant released on his or her own recognizance in any case  
39 involving a violent felony, as described in subdivision (c) of  
40 Section 667.5, or a felony in violation of subdivision (a) of Section

1 23153 of the Vehicle Code, a pretrial investigative report shall be  
2 prepared recommending whether the defendant should be released  
3 on his or her own recognizance. The report shall include all of the  
4 following:

5 (1) Written verification of any outstanding warrants against the  
6 defendant.

7 (2) Written verification of any prior incidents where the  
8 defendant has failed to make a court appearance.

9 (3) Written verification of the criminal record of the defendant.

10 (4) Written verification of the residence of the defendant during  
11 the past year.

12 After the report is certified pursuant to this subdivision, it shall  
13 be submitted to the court for review, prior to a hearing held  
14 pursuant to Section 1319.

15 (c) Whenever a court, sheriff, county probation department, or  
16 other local governmental agency has employed an investigative  
17 staff pursuant to subdivision (a), a pretrial investigation report may  
18 be prepared in any case not involving a violent felony, as described  
19 in subdivision (c) of Section 667.5, or a felony in violation of  
20 subdivision (a) of Section 23153 of the Vehicle Code,  
21 recommending whether the defendant should be released on his  
22 or her own recognizance. Only one agency authorized pursuant to  
23 subdivision (a) shall issue a pretrial investigation report.

24 (d) Any report prepared pursuant to subdivision (b) or (c) shall  
25 include all of the results of an evidence-based pretrial risk  
26 assessment evaluating the defendant's probability of appearing at  
27 trial and potential risk to public safety. "Evidence-based pretrial  
28 risk assessment" is the objective, standardized analysis of  
29 information about a pretrial defendant in a way that is consistent  
30 with and guided by the best available scientific evidence and  
31 professional knowledge that measures the ~~risk of the~~ defendant's  
32 probability of appearing at trial and the potential risk to public  
33 safety while pending case disposition.

34 (e) In preparing the report pursuant to subdivision (b) or (c),  
35 the defendant shall not be interviewed about the facts and  
36 circumstances of the current offense, and any information that a  
37 defendant may provide shall not be included in the report. Any  
38 information provided by the defendant shall be used solely for the  
39 purposes of determining whether the defendant should be released  
40 on his or her own recognizance or in setting the conditions of the

1 defendant's release or modifying a prior release order. The reports  
2 may be filed as part of the case record.

3 (f) A court, sheriff, county probation department, or other local  
4 governmental agency may, with the concurrence of the board of  
5 supervisors, employ supervision staff to monitor the defendant's  
6 compliance with the release conditions ordered by the court.  
7 Supervision staff may do any of the following:

8 (1) Notify the defendant of court appearance obligations.

9 (2) Require the defendant to report periodically by mail,  
10 telephone, or personal appearance to verify compliance with release  
11 conditions.

12 (3) Monitor and assist the defendant with complying with  
13 release conditions.

14 (4) Supervise a defendant placed on home detention, with or  
15 without electronic monitoring, as a condition of release.

16 (5) Promptly report violations of release conditions to the court.

17 (6) Provide information to assist any law enforcement officer  
18 with detaining a defendant supervised pursuant to this section and  
19 for whom a bench warrant has been issued.

20 (g) The salaries of the staff are a proper charge against the  
21 county.